



Arizona Department of Agriculture

Office of Pest Management

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Notice of Meeting and Agenda for the Task Force on the Regulation of Structural Pest Management

The Task Force on the Regulation of Structural Pest Management (OPM Task Force) gives notice that it will hold a meeting open to the public on Tuesday, October 18, 2011 beginning at 10:00 a.m. in Room 206 of the Arizona Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona. The Task Force may vote to hold an executive session for the purpose of obtaining legal advice on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

The agenda for the meeting is as follows:

1. Roll Call – Jack Peterson, Chairman & OPM Acting Director

In Attendance: John Boelts, Dave Burns, Ken Fredrick, Lin Evans, Jimmy Fox, Phil Hemminghaus, Kirk Smith, and Will Rousseau(Late Arrival)

Absent: None.

2. Current Status of the Office of Pest Management and coordination with the Department of Agriculture, including:

- Listserv Signup – <http://listsrv.azda.gov/> - Jack Peterson
- Criminal Background Reviews – How we are doing it.

Mr. Peterson briefly explained the current process of the criminal background reviews. He stated that he has been sitting in on the reviews since the move to get a better idea of the process. He explained that he has made the decision to change the current review process. The new process is, the individuals who come in who have not had run-ins with the law for 3 or more years that the review process has been delegated to Robert Tolton who decides if there is anything controversial. If not, they are approved to test. Mr. Fredrick asked if there was a list of offenses that are reviewed. Mr. Tolton stated that all felonies are reviewed and that there is a list for misdemeanors involving moral character. Whether the individuals come in for an interview will be based on if they fall within the 3 year period. Mr. Boelts asked if there has ever been a denial based on an individual's background. Mr. Robert Tolton stated that there have been denials based on the convictions in their past. He explained that last fiscal year there were approximately 6 denials. Mr. Smith asked if the applicants with criminal convictions were put on a probation period. Mr. Tolton explained that the probation period for these individuals had not been in effect since the change from SPCC (Structural Pest Control Commission) to OPM (Office of Pest Management). Mr. Peterson stated that this topic will be put on an agenda for a future meeting to be further discussed.

Mr. Vince Craig explained his findings on the research he had done on other states about if they preformed background checks for licensure. He stated that only 3 of the 14 states he contacted required background investigations. He said that those that do not required the background investigations stated that either they felt it was not their job to run those checks and only to ensure the proper knowledge of laws, rules, and safety is being obtained by the applicators. He stated that most states were primarily concerned with the legal residency of the applicators not the backgrounds.

- License renewal reminder – mailing out
Mr. Tolton stated that the OPM will be mailing out Business License and Qualifying Party License Renewal Applications no later than October 28, 2011. RenewEZ will open November 1, 2011. He stated that it will run through at the normal rate until January 1, 2012. Starting January 1, 2012 until January 30, 2012 renewal will continue with late fees. After January 30, 2012 licenses will no longer be able to be renewed.
 - Agency Educational Courses
Mr. Peterson stated that last year with SCECE (Saguaro Continuing Education Conference and Expo) being held 6% of license holders were obtaining their CE credits through the OPM. Mr. Peterson explained that there will be no SCECE this year and that will reduce the number of license holders that are using OPM to obtain their CE hours. Only 4 CE classes will be offered through OPM and each class will be \$48.00.
3. Review of all laws and regulations governing structural pest management in Arizona and changes necessary to accomplish the future structural pest management program, including:
- Department of Agriculture’s existing statutory framework and regulatory scheme related to pesticides
 - i. Review of powers and authority statutes – comparisons and rules that fit.
 - 32-2305 & 32-2317 Fees and Funds –
In the Department of Agriculture law they list out the license holders and the prescribed fees which matches what the OPM has in the current law structure. Ken Fredrick stated that in 32-2317 it states how much each license can be renewed for, and questioned if that law was still wanted. Mr. Peterson stated that his view was that if it was kept in law he would like to see it set at a high enough level that there is enough room to work with it. The Department of Agriculture has the same structure, it sets a certain level. Lin Evans asked why the pest management fund needed an exemption. Mr. Peterson stated that it is similar to the pesticide, feed, and fertilizer fund. He further explained that it has the same exemption and it is from lapsing appropriation. Mr. Casey Cullings explained that the lapsing appropriation meant that at the end of the fiscal year the agency gets to keep the money that is in there and it does not automatically go to the general fund.
 - 32-2308 Joint Responsibility –
Mr. Peterson stated that there is nothing currently in the Department of Agriculture law that would make one individual responsible for another.
 - 32-2311 Exemptions –
Mr. Peterson explained that he feels the Department of Agriculture probably needs something similar in its laws.
 - 32-2312, 32-2314, 32-2321 background checks –
Mr. Peterson stated that this matter will be put on a future agenda for discussion.
 - 32-2314 QP –
Mr. Peterson questioned the need for a Qualifying Party. He stated that he feels that maybe it is not a necessary license and that maybe each company just needs a designated licensed responsible party. The Task Force briefly discussed the difference between a QP and a Responsible Party.
 - 32-2321 Disciplinary –
Mr. Peterson stated that the key differences about the disciplinary actions are: Making a fraudulent statement or intentional misrepresentation in connection

with a wood treatment proposal and the ability to impose a penalty of \$1000 while ADA only has the ability to impose a penalty of \$500. Mr. Peterson explained that currently in a case depending on the circumstances they either go after the business or the certified applicator. Mr. Anthony Banks asked who would be disciplined if it was a certified applicator working for a political sub-division, since a political sub-division does not have to have a business license. Mr. Peterson responded that if that were the circumstance that the certified applicator would be disciplined. Mr. Craig stated that there is not a requirement for political sub-divisions to maintain records, and because there is no requirement for a business license or a QP the certified applicator is required to properly fill out records but not maintain them. So therefore, it could prove to be difficult to get the records from a political sub-division. Mr. Peterson stated that if it is the use of a restricted use pesticide that by federal law that record has to be maintained.

32-2324 Wood Destroying Insect Inspection Report –

Mr. Peterson stated that the Department of Agriculture has no law similar to that.

32-2324 Fungi Inspection –

Mr. Tolton explained that there is a category for this currently but the intent is to get rid of it. He stated that all these reports state is that there are conditions conducive. He said that he feels that would fall better under BTR(Board of Technical Registration) since they have remediation and inspection reports as well. He stated that right now under the OPM the only thing that can be done is reporting conditions conducive and that even if someone sees it they cannot treat it under OPM license. Only BTR can treat mold. Mr. Tolton stated that the B6 category was created for the potential of treating pools with chlorine gas and the use of antimicrobials like disinfectants. Lin Evans asked what the Board of Technical Registration was. Mr. Tolton informed him that it is a state agency that licenses home inspectors, engineers, and individuals who do mold remediation. Mr. Burns stated that they also deal with people cleaning up blood born pathogens. He stated that those companies that do mold remediation are not typically any part of the pest control industry, and that it is mostly insurance business. Mr. Peterson stated that he is not sure OPM should eliminate the B6 category. He stated that he feels that it should stay in place in case something comes along that does have to be regulated by OPM that no other agency has the authority to regulate. Mr. Burns stated that it may be as simple as creating a position statement that says the goal is to regulate restricted gases. Mr. Peterson stated that he felt that it should be restricted use products, and not just gases.

32-2329 Summary Suspension –

Mr. Cullings stated that this is covered in all agencies.

32-2307 Schools –

Mr. Peterson stated that he wants to make sure that with the changes in laws and rules that schools remain covered and protected and everyone understands this as the changes occur.

32-2323 Wood Destroying Insect Treatment Proposal –

Mr. Peterson stated that he feels that we could cover this under Record Keeping Requirements.

- Office of Pest Management staff recommendations on changes needed to OPM rules and laws
 - i. Certification/Licensing requirements – including insurance needs

1. How do we reduce the burden on the industry?

Mr. Tolton stated that one of the topics for discussion should be how to proceed with renewals. Previously there were 2 different renewals in the year. He stated that part of the reason for this was the burden of the work load coming in all at one time of year and the funding not be spread out. He explained that he feels that it could get to a point where all OPM renewals were done at the same time of the year. He further explained that he had spoken to several industry members, and they indicated that they would like to see a single renewal period in May. Mr. Tolton stated that this time frame made sense due to the increase of pest control work during that time of year and the increase in revenue for the pest control companies.

Mr. Tolton said that he would also like to see late fees reevaluated. He feels they are beyond excessive.

Mr. Burns would like to see the business license holder be notified if a technician's license does not get renewed. He explained that it makes operation difficult when the business does not get that information. He feels this information is important since the business licensee is responsible. Mr. Tolton explained that the current status for all Business Licenses, Qualifying Party Licenses, and Applicator Licenses are posted on the website.

Mr. Peterson stated that he disliked the ability to put a license on an inactive status. Mr. Tolton explained that in statute it states that a QP license is to be kept on inactive status unless actively qualifying a business. Mr. Tolton further explained that the only benefit of having an inactive Applicator License is not being required to obtain CE hours to renew. He stated that an Applicator License is either completely active or completely inactive, however a QP can be active in some categories and inactive in others based on the company needs. There was general consensus around the table that the inactive status – no CE required, should be eliminated.

Mr. Tolton stated that he feels that there should be no reason to require the verification of practical experience if we require them to take a test. Mr. Smith stated that he agrees with Mr. Tolton. Mr. Peterson feels that only certain categories should require practical experience.

Mr. Peterson stated that he wants to make sure that there are still laws in place to protect the children at schools and day care facilities. Mr. Craig stated that the primary concern of the schools about pesticide use is the date it is going to be applied. The product information is requested by OPM. Mr. Rousseau feels that there should be something put in statute to enforce the record keeping for the political sub-divisions.

Mr. Schneiker feels that he should be able to hire a single licensed applicator, without hiring a company or starting up a new business of his own, to come and perform pest control on the properties that he manages. Mr. Rousseau stated that he does not see an issue with this request. Mr. Burns states his concern with not having a company hired to perform the pest control work is that Mr. Schneiker does not know the occupation or health status of the individuals living on these properties. He explained that General business insurance policies do not cover pesticide applications.

1. Does everyone need the same level of training/experience for certification?

2. Is a QP needed or do we just need a responsible individual?

Mr. Craig stated that if a political sub-division is not required to have a Qualifying Party then he does not see the need for them to exist. He explained, that if the legislature trusts the political sub-division to-do their job properly without a Qualifying Party it makes him question the validity of the QP License. He stated that he is wondering if the requirement for a Qualifying Party is due to wanting an individual to supervise and train applicators or if it is due to wanting someone responsible if something bad happens. Mr. Burns stated that he would like to see the responsible party for a business designated the same way a branch office manager is. He stated that the only requirements should be that they be a licensed applicator in the categories in which the business is operating. Mr. Tolton explained that some schools and cities have acquired business licenses and have a qualifying party because they want to have a responsible party. Mr. Kevin Etheridge, of Contractors Termite and Pest Control, stated that he feels not all categories need to be held to the same amount of practical experience. Phyllis Farenga stated her experience for obtaining experience for pest control in New York and the practical testing on this. Mr. Bob Wagner, of Wagner's Pest Solutions (a family owned company), stated that he feels that the QP is being devalued. He stated that he would like to see it become harder to obtain a QP license. He explained that he feels it being too easy to obtain a QP license is a disservice to the general public. He further explained that he wants more regulations because it would eliminate those who do not have the knowledge and experience. Mr. Burns agreed with Mr. Wagner but feels that 3000 hours is too hard to measure. Mr. Tolton explained where the 3000 hours of practical experience came from. Mr. Banks stated that he feels there should be not only a written test but a practical test.

4. Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03 (A)(3) on any matter listed on the agenda.

5. Call to the Public (2 minute limit per speaker)

This is the time for the public to comment. Members of the Task Force may not discuss items that are not specifically identified on the agenda. Therefore, in response to public comments made on issues that are not listed on the agenda, the Task Force is limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date.

Jake Kinman, from Arizona's Pest Professional's Organization, stated that the organization has created a listserv. The listserv is for the purpose of creating a community town hall forum for professionals to send in questions, comments, and concerns about industry issues.

6. Set Next Meeting Date and Topic Discussion

The next meeting will include discussions on the Qualifying Party, criminal background checks, TARFs, and it was requested that Vince Craig give an overview of penalties.

Next meeting date set for November 16, 2011 at 10:00 AM

7. Adjourn

12:20 PM

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Anna Villa at (602) 542-4315 (voice), or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.